

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
DALLAS DIVISION

DR. ADAM BENHAM

Plaintiff,

v.

FIVE POINT DENTAL SPECIALISTS,
INC., et al

Defendants.

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CIVIL ACTION NO.

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW Dr. Adam Benham, Benham Property Owners Association, LLC, and Benham Orthodontics & Associates, PA (“Benham”), Counter or Third- Party Defendants in the caused styled “*Dr. Adam Benham v. Five Point Dental Specialists, Inc., FPDS Benham Sub, LLC, and FPDS Benham Holdco, LLC; Five Point Dental Specialists, Inc., FPDS Benham Sub, LLC, Benham Orthodontics, PA v. Dr. Adam Benham, Benham Property Owners Association, LLC, and Benham Orthodontics & Associates, PA*” originally pending as Cause No. 471-02575-2024 of Collin County, Texas. Pursuant to the terms and provisions of 28 U.S.C. §§ 1331 and 1446, hereby file this Notice of Removal of the cause to the United States District Court for the Eastern District of Texas, Plano Division.

I.

This Notice of Removal is filed on the basis of a federal question. Five Point Dental Specialists, Inc., FPDS Benham Sub, LLC, Benham Orthodontics, PA (“Five Point”) filed their First Amended Petition, and Application for Temporary Restraining Order, Temporary Injunction,

and Permanent Injunctive Relief on May 16, 2024. The Petition alleges under Count 3 – Breach of the APA that Benham is “reneging on providing Five Point the ‘Acquired Assets’” and requests injunctive relief to restrain Benham from “[n]either directly nor indirectly, using, practicing, or operating under ‘Benham Orthodontics’ or any variants thereof, including, but not limited to, Benham Orthodontics & Associates PA.” Additionally, Five Point’s claims attempt to restrict the First Amendment rights of Benham and violate the rules of the Federal Trade Commission.

II.

This removal is timely because it is filed within 30 days after the receipt by Benham, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceedings is based. 28 U.S.C. § 1446(b). The pending action was first filed on April 29, 2024 and amended to include the new claim on May 16, 2024. Accordingly, this removal is timely because it is made within thirty days of the service. Further, more than one year has not passed since the commencement of the action in a state court. 28 U.S.C. § 1446(b).

III.

The present suit is an action over which the United States District Court for the Eastern District of Texas, Plano Division, has jurisdiction because of the federal question regarding the trademark assets that Five Point is asserting rights to and attempting to restrain Benham from using.

IV.

Benham would show that they have filed with the Clerk of the 471st District Court of Collin County, Texas, a true copy of this Notice of Removal simultaneously filed with the filing hereof in this Court.

V.

Copies of all process, pleadings and orders, as well as the docket sheet relating to this case and previously filed with the 471st District Court of Collin County, Texas are attached hereto as Exhibit 1.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Dr. Adam Benham, Benham Property Owners Association, LLC, and Benham Orthodontics & Associates, PA respectfully pray that this case be removed to the United States District Court for the Eastern District of Texas, Plano Division.


Respectfully submitted,

JAMES S. BELL, P.C.

/s/ Connor Nash
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ATTORNEY FOR BENHAM


CONSENT TO REMOVAL:



Dr. Adam Benham



Dr. Adam Benham
Benham Property Owners Association, LLC



Dr. Adam Benham
Benham Orthodontics & Associates, PA

CERTIFICATE OF SERVICE

On May 22, 2024, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Eastern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Connor Nash
Connor Nash